MAR 22 1967

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1966

No. 1177

CASEY GRAY, ALAN COWIE and PAUL WOODMAN, Individually, Jointly and on behalf of all other Non-Residents of the STATE OF WISCONSIN who are Residents of ILLINOIS and MICHIGAN, and who are allegedly subject to the WISCONSIN INCOME TAX,

Petitioners,

VS.

JAMES R. MORGAN, Commissioner of Taxation for the State of Wisconsin,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

ADELINE J. GEO-KARIS,
2600 Sheridan Road,
Zion, Illinois,
Counsel for Petitioners.

GEORGE D. KARCAZES,
29 South La Salle Street,
Chicago, Illinois,
Of Counsel.

MIDWEST LAW PRINTING CO., 326 N. MICHIGAN, CHICAGO 60601, FINANCIAL 6-3988

INDEX

	PAGE
Petition	1
Opinions Below	2
The Record on this Petition	2
Jurisdiction	3
Questions Presented	3
Statutes and Constitutional Provisions Involved	4
Statement of the Case	5
Reasons Relied on for Allowing the Writ	8
Supplemental Appendix:	
Opinion of the Court of Appeals	29a
Judgment of the Court of Appeals	35a

Table Of Citations

Cases:

Abernathy v. Carpenter, 208 F. Supp. 793, aff'd. 373 U.S. 241 (1962) 8, 9
Adams v. City of Park Ridge, 293 F. 2d 585 8
Bussie v. Long, 254 F. Supp. 797 8
Great Lakes Company v. Huffman, 319 U.S. 293 8
Hague v. C.I.O., 307 U.S. 496, 531 (1939) 8, 9
Holt v. Indiana Manufacturing Co., 176 U.S. 68 (1900) 8, 9
Hornsby v. Allen, 326 F. 2d 605, 610 (1964) 8, 9
Joe Louis Milk Co. v. Hershey, 243 F. Supp. 351, 354 (1965) 9, 10
McNeese v. Board of Education, 373 U.S. 668 11
Progress Development Corp. v. Mitchell, 286 F. 2d 222 8
Ream v. Handley, 359 F. 2d 728, 731 (1966) 10
Zenith Dredge Company v. Corning, 231 F. Supp. 584 8

Statutes:

28 U.S.C. §1341 4
28 U.S.C. §1343 4

Constitutions:

Article IV, Section 2, Constitution of the United States 4
Article XIV, Section 1, Constitution of the United States 4

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1966

No.

CASEY GRAY, ALAN COWIE and PAUL WOODMAN, Individually, Jointly and on behalf of all other Non-Residents of the STATE OF WISCONSIN who are Residents of ILLINOIS and MICHIGAN, and who are allegedly subject to the WISCONSIN INCOME TAX,

Petitioners,

VS.

JAMES R. MORGAN, Commissioner of Taxation for the State of Wisconsin,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

Petitioners pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit entered on December 22, 1966 in Appeal No. 15,722, which affirmed the District Court's judgment dated March 11, 1966 dismissing Petitioners' Complaint.

OPINIONS BELOW.

The District Court's judgment of March 11, 1966, dismissing Petitioners' Complaint (Appendix, pp. 24a-27a) is reported at 251 F. Supp. 316.

The Opinion of the Court of Appeals dated December 22, 1966 (affirming the District Court's judgment), is appended hereto, and is reported at 371 F.2d 172.

THE RECORD ON THIS PETITION.

The record on the foregoing Petition consists of the following:

Appendix of Appellants (the Petitioners herein) as filed in the Court of Appeals in connection with their aforesaid Appeal No. 15,722—which Appendix is paginated 1a to 28a, inclusive.

The opinion and judgment of the Court of Appeals—as included in the certified copy of the record in the Court of Appeals filed herewith.

The hereto-appended Supplemental Appendix (within the cover hereof), containing the opinion and judgment of the Court of Appeals—this Supplemental Appendix being paginated beginning with page 29a.

JURISDICTION.

The judgment of the Court of Appeals with respect to which the writ of certiorari is sought was entered on December 22, 1966.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

Does the jurisdiction of Federal Courts under the "Civil Rights" statute, 28 U.S.C. § 1343, apply only to cases involving "personal liberty" or does it extend to cases involving "property" or "monetary" claims?

Does the proscription contained in 28 U.S.C. § 1341 supercede the absolute grant of original jurisdiction contained in 28 U.S.C. § 1343?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The relevant portions of the statutes and constitutional provisions involved in this case are brief enough to be set forth herein verbatim:

28 U.S.C. § 1341:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

28 U.S.C. § 1343:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> • • •
>
> "(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; • • •"

Article IV, Section 2, Constitution of the United States:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Amendment XIV, Section 1, Constitution of the United States:

> "Section 1. • • • No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. • • •"

STATEMENT OF THE CASE.

This action was commenced by Petitioners' Complaint for Declaratory Judgment and Injunction or Other Appropriate Relief, filed in the U. S. District Court for the Eastern District of Wisconsin on January 22, 1964.

The Plaintiffs allege that the Wisconsin income tax, as applied to non-residents, is discriminatory. That certain deductions available to resident taxpayers are not allowed to non-residents, resulting in a higher tax for non-residents, in certain cases, on the same amount of income. Plaintiffs also complain that many state services for which they are paying are either not available to them, or else, are available at a higher cost than to Wisconsin residents.

The relief sought by Plaintiffs is (a) that the Court determine the rights and obligations of Plaintiffs with respect to the deduction of interest on mortgages on their homes, with respect to the deduction of losses on their homes, and with respect to the payment of Wisconsin income taxes; (b) that the Court enjoin the enforcement of the Wisconsin income tax statutes against them; (c) that the court declare unconstitutional, in whole or in part, the Wisconsin income tax statutes as applied to non-residents; and (d) that the court order the State of Wisconsin to refund taxes illegally collected from non-resident Plaintiffs.

On June 14, 1965 the Defendant filed his motion to dismiss the Complaint on the grounds that (1) the civil rights section, 28 U.S.C. § 1343, is inapplicable to tax claims, and (2) that federal courts may not entertain

this action because Plaintiffs have a plain, speedy and efficient remedy in the Wisconsin Courts, as set forth in 28 U.S.C. § 1341.

Defendant's motion to dismiss was heard by the District Court on October 7, 1965 and said motion was taken under advisement. On March 11, 1966, the Court entered its order granting Defendant's motion to dismiss. The court held that Plaintiffs' contention that they did not have a plain, speedy and efficient remedy in the Wisconsin Courts "is without substance" (Appendix, p. 25a) that although 28 U.S.C. § 1341, does not "prevent a federal court from entertaining an action for declaratory judgment with respect to the constitutionality of a state tax statute, absent injunctive relief" the "wholesome restraint" reflected in that section is persuasive that relief by way of declaratory judgment should also be withheld by federal courts, that it inclines to "defendant's view that 28 U.S.C. § 1343 is inapplicable to the assertion of claims which are primarily fiscal," and that said § 1343 "does not supersede the clear prohibition of Section 1341." (Appendix, pp. 26a-27a)

The Court of Appeals affirmed the judgment of the District Court (Supplemental Appendix, *infra*, pp. 29a-34a). The Court said:

> "Under the circumstances present here, we find nothing in the history or construction of the civil rights statute, § 1343, to indicate its concern with the vaility of a state tax as a revenue measure. *Thus far, at least, it is quite clear that the courts have generally treated this statute as applicable to personal liberty rather than a property or monetary claim.*" (Supplemental Appendix, *infra*, p. 33a) emphasis supplied.

The Court then concluded:

> "We have carefully considered the whole of Plaintiffs' contentions, together with their cited authorities, but we are quite convinced that the decision of the trial court is sound and should not be disturbed. *This is not to say that we indicate a view that, under other circumstances, an effort to adjudicate 'human rights' under the Federal Constitution may not be asserted in a federal court, even though another forum may be open.*" (Supplemental Appendix, *infra*, p. 34a) emphasis supplied.

The provisions of the Wisconsin Income Tax Statute, Chapter 71, Wisconsin Statutes, 1961, which are challenged by petitioners, are set forth in the Complaint (Appendix, pp. 4a-18a). The question of the validity of said provisions was not reached in the lower courts and is not before this Court.

REASONS RELIED ON FOR ALLOWING THE WRIT.

This is a case of first impression and this petition is sought because the issues presented have a significant impact on civil rights as well as raising important questions of federal action in State tax matters.

We are aware of no federal case dealing with State taxes which holds that § 1343 applies only to matters involving "human rights" and not "property rights." We are aware of no authority holding that § 1341 supersedes or limits the grant of original jurisdiction contained in § 1343.

The district court cited and relied upon three cases. *Zenith Dredge Company* v. *Corning,* 231 F. Supp. 584, *Great Lakes Co.* v. *Huffman,* 319 U.S. 293, and *Abernathy* v. *Carpenter,* 208 F. Supp. 793, affirmed *per curiam,* 373 U.S. 241. The Court of Appeals cited and relied upon the same cases, and mentioned also, *Hague* v. *C.I.O.,* 307 U.S. 496, *Holt* v. *Indiana Manufacturing Co.,* 176 U.S. 68; and *Bussie* v. *Long,* a Louisiana District Court case reported at 254 F. Supp. 797.

The reasoning of the Court of Appeals is in conflict with that contained in two of its own previous decisions, *Progress Development Corp.* v. *Mitchell,* 286 F. 2d 222, and *Adams* v. *City of Park Ridge,* 293 F. 2d 585. In both of those cases the court refused to distinguish between "human rights" and "property rights." The reasoning of the court in the instant case is also in conflict with that of the Fifth Circuit Court of Appeals, as expressed in *Hornsby* v. *Allen,* 326 F. 2d 605 (1964). The *Hornsby*

case was brought under § 1343 and involved the denial of a liquor license to plaintiff by the officials of the City of Atlanta. The Court there upheld the federal court's jurisdiction saying, at pages 610-611:

> "* * * The coverage of the Civil Rights Act has long been the subject of heated controversy.
>
> * * *
>
> "The trend of the recent cases, however, has been to accept more and more actions under the civil rights statutes. Thus suits have been allowed for * * * an injunction against enforcement of ordinances regulating the operation of taxicabs, *Walton* v. *City of Atlanta,* 181 F. 2d 693 (5th Cir.), cert. denied, 340 U.S. 823, * * *."

Clearly, the issuance of a liquor license and the regulation of the operation of taxicabs are "property rights."

Petitioners and respondents both cited the Illinois district court case of *Joe Louis Milk Co.* v. *Hershey,* (1965) 243 F. Supp. 351, which upheld federal jurisdiction under § 1343 on a purely "monetary claim." In that case Judge Parsons referred to the *Abernathy* v. *Carpenter,* (supra); *Hague* v. *C.I.O.,* (supra), and *Holt* v. *Indiana Manufacturing Co.,* (supra) cases as "old cases" indicating that recent cases have tended to expand federal jurisdiction in the civil rights area. The Judge went on to say, at page 354:

> "* * * No difference in constitutional protection between property rights and human rights is expressed in the language of § 1343 itself, nor can any meaningful distinction be made or justified * * * Neither logic nor policy compels the conclusion that property rights are less deserving of protection under the Constitution and Civil Rights Act than are human freedoms. It appears under current statutory inter-

> pretation, that the right of an individual or a corporation not to be deprived of property without due process of law is a 'right * * * secured by the Constitution' within the meaning of § 1343. * * *"

The Court of Appeals in the instant case chose not to discuss the *Joe Louis* case in its opinion. The same Circuit has considered the *Joe Louis* case once, however, in *Ream* v. *Handley,* 359 F. 2d 728 (1966) decided approximately six months before the instant case. The Court's reasoning appears at page 731 of the *Ream* case:

> "* * * The controlling authority, however, seems to hold that the civil rights statutes, of which § 1983 is one, do not confer jurisdiction where a person seeks only to protect property or monetary rights. *Holt* v. *Indiana Manufacturing Company,* 176 U.S. 68, 72, 20 S. Ct. 272, 44 L. Ed. 374 (1900); *Hague* v. *C.I.O.,* 307 U.S. 496, 531, 59 S. Ct. 954, 83 L. Ed. 1423 (1939); *Abernathy* v. *Carpenter,* W.D. Mo., 208 F. Supp. 793, 794 (1962) aff'd, 373 U.S. 241, 83 S. Ct. 1295, 10 L. Ed. 2d 409 (1963). The only cited case which is authority for plaintiffs' view is *Joe Louis Milk Company* v. *Hershey,* 243 F. Supp. 351, 354 (1965). We are not prepared to ignore the foregoing cases antedating 1965."

The question whether the Constitution and Civil Rights Act distinguish between the protection to be afforded to "human rights" and "property rights" is far reaching and urgently in need of determination. The question whether States may avoid federal civil rights jurisdiction if they discriminate against a citizen's "property rights" but not if they discriminate against "human rights" is a vital question which must be determined finally and emphatically.

The reasoning employed by Judge Parsons in the *Joe Louis* case is convincing. The reasoning of this Court in

McNeese v. *Board of Education*, 373 U.S. 668 should be applied to the instant case. In that case this Court said, at page 671:

> "• • • We have previously indicated that relief under the Civil Rights Act may not be defeated because relief was not first sought under state law which provided a remedy. We stated in *Monroe* v. *Pape*, 375 U.S. 167, 183:
>
> > 'It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.'"

There is no legal, logical or moral reason to make a distinction between "human rights" and "property rights." There is, in fact, no such distinction. The term "property" has no significance except as it applies to something owned by someone. Property itself has neither rights nor value, save only as human interests are involved.

The authors of the Constitution and its Amendments realized what some today seem to have forgotten: that man has *three* great God-given rights, *equally* sacred from arbitrary infringement—the right to life, the right to liberty, and the right to property. These three rights are so closely bound together as to be essentially only one right. To give a man life but deny him liberty is to take from him all that makes life worth living. To give a man liberty but deny him his right to property is to take from him all that truly makes him free.

Nowhere does the Constitution or Civil Rights Act distinguish between these rights. We must assume that the Congress was aware of the provisions of § 1341 when it

enacted § 1343. If the Congress intended to *limit* the jurisdiction of federal courts "to redress the deprivation, under color of *any* State law, statute, ordinance, regulation, custom or usage, of *any* right, privilege or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights of Citizens" it could easily have done so by simply adding to the language of § 1343: "*except* those State laws dealing with State taxes and *except* those rights of citizens which are *merely* property or monetary rights." The reasons that the Congress did not make such an exception should be apparent. Both the District Court and the Court of Appeals have adopted a doctrine concerning Civil Rights which is novel and pernicious. To permit these decisions to remain unaltered will result in a proliferation of litigation and will open the door wide to the practice of discriminating between the basic rights of citizens.

The instant case presents issues of unusual significance, issues which do not appear to have been specifically passed upon by this Court, which have resulted in conflicting opinions in the lower courts, and which we trust this Court will resolve.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ADELINE J. GEO-KARIS,
2600 Sheridan Road,
Zion, Illinois,
Counsel for Petitioners.

GEORGE D. KARCAZES,
29 South La Salle Street,
Chicago, Illinois,
Of Counsel.